

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: Western Iowa Telephone Association (A Cooperative) Lawton, Iowa NPDES Permit No. 23410-23168 General Permit No. 2	ADMINISTRATIVE CONSENT ORDER NO. 2014-WW- 04
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TO: Russell E. Walker (President)
Western Iowa Telephone Association
P.O. Box 78
Menville, IA
510390078

Russell Walker (Registered Agent)
Western Iowa Telephone Association
202 Cedar St.
P.O. Box 38
Lawton, IA
510300038

I. SUMMARY

This administrative consent order (order) is entered into between Western Iowa Telephone Association (A Cooperative) (WITA) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of WITA's National Pollution Discharge Elimination System (NPDES) General Permit No. 2. WITA agrees to pay an administrative penalty of \$4,000.00. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Any questions or responses regarding this order should be directed to:

Relating to technical requirements:
Michelle Sabatini, Environmental Specialist
IDNR Field Office No. 3

Relating to legal requirements:
Carrie Schoenebaum, Attorney at Law
Iowa Department of Natural Resources

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1900 North Grand Ave, Suite E17
Spencer, IA 51301
Phone: 712-262-4177

502 East 9th Street
Des Moines, Iowa 50319-0034
Phone: 515-281-0824

Payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. WITA owns property located in the SW ¼, Section 29, T89N, R44W Woodbury County, Iowa. This property is located in the town of Merville, Iowa and is locally known as the Ridge Subdivision. The Ridge Subdivision consists of 33.87 acres and is being developed into a residential community. True Engineering and Land Surveying, LLC are the contractors developing this property. On April 26, 2013, WITA was issued NPDES permit No. 23410-23168 by the Department for this site.

2. On October 29, 2013, the Department received a complaint alleging that recent rains had caused erosion control measures to fail at the Ridge Subdivision. This has resulted in sediment being deposited on the complainant's property.

3. On October 30, 2013, Tom Roos, Environmental Specialist Senior with the Department, called Mr. Scott Gernhart of True Engineering and Land Surveying LLC to discuss the complaint. Mr. Roos advised that any erosion control measures in need of repair should be restored immediately and additional practices (i.e., extra silt fence and earthen berms) should be installed to prevent further loss of sediment from the property.

4. On November 1, 2013, Mr. Roos and Michelle Sabatini, Environmental Specialist with the Department, went on site to investigate. Once on site the Department observed the following violations: (1) despite weekly on-site inspection reports being completed, there were many areas in which the silt fences were in need of repairs; (2) inlet pipes were covered in sediment because some of the silt fences had failed; (3) areas where heavy erosion had occurred could have been prevented through the installation of silt fences; (4) storm sewer intakes were exposed; (5) evidence of a subcontractor washing concrete in the street and the runoff from the washing

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entering a storm drain; (6) the Storm Water Pollution Prevention Plan (SWPPP) had not been signed as required by the NPDES permit; and (7) contractors had not signed the contractor certification statement which is part of the SWPPP.

5. On November 6, 2013, the Department received an e-mail from WITA, attached to this e-mail was a copy of the SWPPP, inspection reports and plan sheet. WITA stated it would ask its contractors to sign the required documents. This e-mail also informed the Department of its progress in installing erosion controls.

6. On November 20, 2013, the Department sent WITA a copy of the inspection report which documented the violations, a Notice of Violation and a Notice of Referral. This letter informed WITA of the steps it needed to take to achieve compliance.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 states that a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the Director. The above stated facts show noncompliance with this provision.

2. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Environmental Protection Commission (Commission) has adopted federal regulations pertaining to the issuance of NPDES permits for storm water discharge at 567 IAC 60.2 and in 567 IAC chapter 64. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. Number 10 under this definition includes "construction activity" including clearing, grading, and excavation activities. Excluded are operations that result in the disturbance of less than one acre of total land area that are not part of a larger common plan of development or sale.

3. Subrule 64.4(2) provides that the Director may issue general permits that are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for the following activities: (1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.15(2) adopts Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. Subrule 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)"b," the applicant is authorized to discharge, unless notified by the Department to the contrary.

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4. General Permit No.2, Part VI. D (Duty to Mitigate), states that "[t]he permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment." WITA has failed to maintain silt fence and other sediment and erosion control measures that were to protect neighboring property from silt and storm water runoff.

5. Department subrule 567 IAC 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. This would include WITA operating under the authority of NPDES General Permit No. 2. Failure to comply with General Permit No. 2 is a violation of subrule 64.3(1). Moreover, numerous provisions of WITA's NPDES permit were violated.

V. ORDER

THEREFORE, the Department orders, and WITA consents to do, the following:

1. Cease all illegal discharges to waters of the State;
2. Comply with all conditions of the site's NPDES General Permit No. 2; and
3. Pay an administrative penalty of \$4,000.00 within 30 days of the Director signing this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations and deterring this party and others from violating storm water permit requirements is the issuance of an administrative order with an administrative penalty. The administrative penalty is determined as follows:

a. **Economic Benefit.** WITA failed to install and maintain adequate runoff control measures throughout the construction site. This avoided several thousand dollars in materials and labor expenses since the ground breaking. The amount of \$2,000.00 is assessed for this factor.

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b. **Gravity of the Violation**. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute.

Failure to properly manage storm water runoff from construction sites degrades surface water quality and deposits excess sediment in water channels. Sedimentation of Iowa's waterways is a serious problem, and regulatory agencies have recognized that uncontrolled runoff is a significant contributor to these problems. Degraded water quality harms aquatic life, prevents the attainment of state water quality goals, and causes a decline in the quality of life generally. The amount of \$1,000.00 is assessed for this factor.

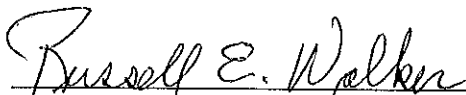
c. **Culpability**. WITA is engaged in the business of construction and property development. As a company engaged in this business, it has an obligation to be aware of the applicable regulations. As a holder of an NPDES permit, the developers have the obligation to be aware and fulfill the requirements associated with it. The amount of \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of WITA. By signature to this order, all rights to appeal this order are waived by WITA.


VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section V. of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.



Russell E. Walker (President)
Western Iowa Telephone Association,

Dated this 22 day of
APRIL, 2014



Chuck Gipp, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 24th day of
April, 2014

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WITA- NPDES Permit No. . **23410-23168** (Copy of Order to Central Office Records File), Tom
Roos- FO 3, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.